

Chapter 5 - Relocation Assistance (Continued)

004 REPLACEMENT HOUSING PAYMENTS

004.01 REPLACEMENT HOUSING PAYMENT FOR 180-DAY HOMEOWNER-OCCUPANTS.

004.01A ELIGIBILITY. A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

004.01A1 Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

004.01A2 Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one-year period for good cause):

004.01A2a The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

004.01A2b The date the displacing agency's obligation under Section 002.04 is met.

004.01B AMOUNT OF PAYMENT. The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also Section 004.04.) The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

004.01B1 The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with Section 004.01C; and

004.01B2 The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with Section 004.01D; and

004.01B3 The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with Section 004.01E; and

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.01B4 The amount, if any, by which the taxes on the replacement dwelling exceed the taxes on the displacement dwelling, as determined in accordance with Section 004.01F.

004.01C PRICE DIFFERENTIAL.

004.01C1 BASIC COMPUTATION. The price differential to be paid under Section 004.01B1 is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

004.01C1a The reasonable cost of a comparable replacement dwelling as determined in accordance with Section 004.03A; or

004.01C1b The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

004.01C2 MIXED-USE AND MULTI-FAMILY PROPERTIES. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

004.01C3 INSURANCE PROCEEDS. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also, see Section 001.03.)

004.01C4 OWNER RETENTION OF DISPLACEMENT DWELLING. If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

004.01C4a The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

004.01C4b The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined in Section 001.02F); and

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.01C4c The current fair market value for residential use of the replacement site (see Appendix A, Section 004.01C4c), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

004.01C4d The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

004.01D INCREASED MORTGAGE INTEREST COSTS. The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person under Section 004.01B2. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Sections 004.01D1 through 004.01D5 shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

004.01D1 The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly. (See Appendix A, Section 004.01D.) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

004.01D2 The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter. If the term on the new mortgage is shorter and, therefore, used in the determination of the payment, it will be necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance(s) on the displacement dwelling and the term of the new mortgage. (See Appendix A, Section 004.01D.)

004.01D3 The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

004.01D4 Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.01D4a They are not paid as incidental expenses;

004.01D4b They do not exceed rates normal to similar real estate transactions in the area;

004.01D4c The Agency determines them to be necessary; and

004.01D4d The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

004.01D5 The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the persons current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

004.01E INCIDENTAL EXPENSES. The incidental expenses to be paid under Sections 004.01B3 or 004.02C1 are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

004.01E1 Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

004.01E2 Lender, FHA, or VA application and appraisal fees.

004.01E3 Loan origination or assumption fees that do not represent prepaid interest.

004.01E4 Certification of structural soundness and termite inspection when required.

004.01E5 Credit report.

004.01E6 Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

004.01E7 Escrow agent's fee.

004.01E8 State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

JUL 30 2001

Chapter 5 - Relocation Assistance (Continued)

004.01E9 Such other costs as the Agency determines to be incidental to the purchase.

004.01F TAX DIFFERENTIAL.

004.01F1 GENERAL. Tax differential payments are provided to compensate eligible displaced owner-occupants for the increase in property taxes resulting from relocation for a three-year period. The displacing Agency shall determine the factors to be used in computing the amount to be paid to a displaced person. Tax statements from the county of displacement will provide the information necessary to compute the amount of eligibility. Homestead exemptions on the comparable dwelling or on the replacement dwelling may adversely affect the payment eligibility and, in such cases, the amount of the exemption should be disregarded in the computation.

004.01F2 BASIC COMPUTATION. The annual tax differential to be paid under Section 004.01B4 is the amount which must be added to the amount of taxes on the displacement dwelling to provide a total amount equal to the lesser of:

004.01F2a The amount of the taxes on the comparable replacement dwelling; or

004.01F2b The amount of the taxes on the replacement dwelling actually purchased and occupied by the displaced person.

004.01F3 MANNER OF DISBURSEMENT. Tax differential payments shall be made in either yearly disbursements or in lump sum payment, at the displacees option. The lump sum amount is the annual amount times three. Displacees who are 62 years of age or older are not eligible for the lump sum payment. Such persons may be eligible for consideration for homestead exemption benefits within the three-year period of eligibility. Elderly displacees will be paid on an annual basis for a three-year period, thus assuring that they will be reimbursed for taxes actually incurred at the replacement dwelling.

004.01F4 TWO OR MORE DWELLINGS. If the displacement property contains two or more dwellings, a carve-out must be made to determine the residential taxes attributable to the owner-occupied dwelling. All other dwellings shall not contribute to the displacement property taxes.

004.01F5 OWNER RETENTION OF DISPLACEMENT DWELLING AND NEW CONSTRUCTION. In most cases, there will not be a first-year tax differential payment. This is due to the relatively low amount of taxes at the previously unimproved replacement site. Second and third-year payments should reflect a reassessment on the newly improved replacement property.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.01F6 ACREAGES. The Agency must carefully consider the amount of land for an acreage at either the subject, comparable, or replacement sites. The amount of land contributing to the total taxes of any dwelling used in a tax differential computation must reflect the typical residential lot size for the area of the dwelling in question. The taxes attributable to any amount of land in excess of a typical lot size for the area must be carved out of the total residential tax value.

004.01G RENTAL ASSISTANCE PAYMENT FOR 180-DAY HOMEOWNER. A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under Section 004.01A but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with Section 004.02B.

004.02 REPLACEMENT HOUSING PAYMENT FOR 90-DAY OCCUPANTS.

004.02A ELIGIBILITY. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with Section 004.02B, or downpayment assistance, as computed in accordance with Section 004.02C, if such displaced person:

004.02A1 Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

004.02A2 Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year (unless the Agency extends this period for good cause) after:

004.02A2a For a tenant, the date he or she moves from the displacement dwelling, or

004.02A2b For an owner-occupant, the later of:

004.02A2b(1) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

004.02A2b(2) The date he or she moves from the displacement dwelling.

004.02B RENTAL ASSISTANCE PAYMENT.

004.02B1 AMOUNT OF PAYMENT. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also Section 004.04.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

JUL '30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.02B1a The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

004.02B1b The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

004.02B2 BASE MONTHLY RENTAL FOR DISPLACEMENT DWELLING. The base monthly rental for the displacement dwelling is the lesser of:

004.02B2a The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the persons income or other circumstances); or

004.02B2b Thirty percent of the persons average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in Section 004.02B2a. A full-time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise.); or

004.02B2c The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

004.02B3 MANNER OF DISBURSEMENT. A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by Section 004.03F, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the persons housing.

004.02C DOWNPAYMENT ASSISTANCE PAYMENT.

004.02C1 AMOUNT OF PAYMENT. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under Section 004.02B if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Section 004.01B if he or she met the 180-day occupancy requirement. An

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under Section 004.01A is not eligible for this payment. (See also Appendix A, Section 004.02C.)

004.02C2 APPLICATION OF PAYMENT. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

004.03 ADDITIONAL RULES GOVERNING REPLACEMENT HOUSING PAYMENTS.

004.03A DETERMINING COST OF COMPARABLE REPLACEMENT DWELLING. The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined in Section 001.02D).

004.03A1 If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Section 002.05A2 and Appendix A, Section 004.03A). An obviously overpriced dwelling may be ignored.

004.03A2 If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

004.03A3 If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

004.03A4 To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

004.03B INSPECTION OF REPLACEMENT DWELLING. Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined in Section 001.02F.

JUL 30 2001

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.03C PURCHASE OF REPLACEMENT DWELLING. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

004.03C1 Purchases a dwelling; or

004.03C2 Purchases and rehabilitates a substandard dwelling; or

004.03C3 Relocates a dwelling which he or she owns or purchases; or

004.03C4 Constructs a dwelling on a site he or she owns or purchases; or

004.03C5 Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

004.03C6 Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

004.03 OCCUPANCY REQUIREMENTS FOR DISPLACEMENT OR REPLACEMENT DWELLING.

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

004.03D1 A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the displacing Agency; or

004.03D2 Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

004.03E CONVERSION OF PAYMENT. A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Section 004.02B is eligible to receive a payment under Sections 004.01 or 004.02C if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sections 004.01 or 004.02C.

004.03F PAYMENT AFTER DEATH. A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.03F1 The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

004.03F2 The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

004.03F3 Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

004.04 REPLACEMENT HOUSING OF LAST RESORT.

004.04A DETERMINATION TO PROVIDE REPLACEMENT HOUSING OF LAST RESORT. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in Sections 004.01 or 004.02, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified either:

004.04A1 On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

004.04A1a The availability of comparable replacement housing in the program or project area; and

004.04A1b The resources available to provide comparable replacement housing; and

004.04A1c The individual circumstances of the displaced person; or

004.04A2 By a determination that:

004.04A2a There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

004.04A2b A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

004.04A2c The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.04B BASIC RIGHTS OF PERSONS TO BE DISPLACED. Notwithstanding any provisions of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Relocation Assistance Act or this rule. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

004.04C METHODS OF PROVIDING COMPARABLE REPLACEMENT HOUSING. Agencies shall have broad latitude in implementing this section, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

004.04C1 The methods of providing replacement housing of last resort include, but are not limited to:

004.04C1a A replacement housing payment in excess of the limits set forth in Sections 004.01 or 004.02. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

004.04C1b Rehabilitation of and/or addition as to an existing replacement dwelling.

004.04C1c The construction of a new replacement dwelling.

004.04C1d The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

004.04C1e The relocation and, if necessary, rehabilitation of a dwelling.

004.04C1f The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.

004.04C1g The removal of barriers to the handicapped.

004.04C1h The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

004.04C2 Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, Section 004.04), including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with Section 001.02D2.

004.04C3 The Agency shall provide assistance under this section to a displaced person who is not eligible to receive a replacement housing payment under Sections 004.01 and 004.02 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the persons financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

ANNOTATION

**Title 410
Chapter 5
Section 004**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**